

Article - Business Regulation

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§5–603.

- (a) In this section, “developed land area” means land in a cemetery:
 - (1) that is available for burial;
 - (2) where roads, paths, or buildings have been laid out or built; or
 - (3) where burial lots have been outlined on a plat or in a record or sales brochure.
- (b)
 - (1) Each sole proprietor registered cemeterian, permit holder, or any other person subject to the registration or permit provisions of this title who sells or offers to sell to the public a burial lot or burial right in a cemetery as to which perpetual care is stated or implied shall have a perpetual care trust fund.
 - (2) A separate perpetual care trust fund shall be established for each cemetery to which this section applies.
 - (3) On the general price list, contract of sale of burial space, and any conveyance documents, all cemeteries subject to the provisions of this subtitle shall state in writing the following using 12 point or larger type font:
 - (i) “The cemetery is a perpetual care cemetery.”; or
 - (ii) “The cemetery is not a perpetual care cemetery.”
 - (4) A cemetery created in the State after October 1, 2001, that is not exempt under § 5–602 of this subtitle shall be required to establish a perpetual care trust fund.
- (c) Each sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle initially shall deposit in the perpetual care trust fund at least:
 - (1) \$10,000, if the developed land area of the cemetery is 10 acres or less and the cemetery is a nonprofit cemetery which does not sell burial goods;
 - (2) \$25,000, if the developed land area of the cemetery is more than 10 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

(3) \$25,000, if the developed land area of the cemetery is 10 acres or less and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial goods; or

(4) \$50,000, if the developed land area of the cemetery is more than 10 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial goods.

(d) (1) The deposits required by this subsection are in addition to the deposits required by subsection (c) of this section.

(2) Except as provided in paragraph (4) of this subsection, within 30 days after the end of the month when the buyer of a right of interment in a burial lot, above-ground crypt, or niche makes a final payment, the registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall pay in cash to the trustee for deposit in the perpetual care trust fund:

(i) at least 10% of the actual selling price of each right of interment in a burial lot, above-ground crypt, or niche; or

(ii) if the burial space is sold at a discount or at no cost, at least 10% of the imputed cost of the fair retail value.

(3) The amount of deposit to the perpetual care trust fund shall be deducted from the proceeds of the listed selling price of the right of interment in a burial lot, above-ground crypt, or niche, and may not be charged as an add-on to the purchaser.

(4) This subsection does not apply to the sale of a second right of interment or the resale of a right of interment in a burial lot, above-ground crypt, or niche for which the cemetery already has paid into the perpetual care trust fund the deposit required by this subsection.

(e) The income from the perpetual care trust fund:

(1) shall be used only for the perpetual care of the cemetery, including:

(i) the maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishment of the cemetery and its grounds, roads, and paths; and

(ii) the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery; and

(2) may not be used to care for memorials or monuments.

(f) Realized capital gains of a perpetual care trust fund are not income of the perpetual care trust fund and shall be deposited in the perpetual care trust fund as principal of the perpetual care trust fund.

(g) (1) The perpetual care trust fund authorized by this subsection shall be a single purpose trust fund.

(2) In the event of the bankruptcy or insolvency of, or assignment for the benefit of creditors by, or an adverse judgment against the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle, the perpetual care trust funds may not be made available to any creditor as assets of the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle or as payment for any expenses of any bankruptcy or similar proceedings, but shall be retained intact to provide for the future maintenance of the cemetery.

(3) The perpetual care trust fund is not subject to judgment, execution, garnishment, attachment, or other seizure by process in bankruptcy or otherwise, or to sale, pledge, mortgage, or other alienation and is not assignable.

(h) A sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall maintain in the office of the cemetery a copy of the most recent trust report filed with the Office under § 5–606 of this subtitle and shall make the report available for inspection by an owner or a prospective purchaser of a right of interment in a burial lot, above-ground crypt, or niche.

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